REPLY

TO

AN ANSWER

TO

"TAXATION

OF

LEARNING, CHARITY,

AND

RELIGION."

PHILADELPHIA:

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1851.

REPLY.

The answer of the County Solicitor demands a brief reply. It is exceptionable in title and manner, as addressed to an individual, to whom personal motives are attributed, and not impersonally to the subject, as it should have been if the facts and argument could have availed, without personal imputations. There had been no provocation afforded to this course, by any mention of any name, any allusion to personal motive or political purpose, which could be suggested of a kind to command a ready assent.

The answer that seems to the writer very conclusive, and may appear so to others of similar prepossessions, wants relevancy and coherence. Its redundancy is inapplicable to the subject, and its omissions a precious source of evidence by inferential admission of the opposing argument. By not denying, it admits,—that the aggregate of exempt property had been needlessly swelled for effect, by including United States property that could not be taxed by law, and State property and public squares that could be taxed for the benefit of no one but the tax collector's commissions. It admits that a large amount of railroad and canal property, set down as exempt, is really taxed as much as any other property; and by not sustaining gives up the previous credible information he possessed of a company untaxed that divided $40,000 annually among its members.

The Solicitor expressly admits that the ends of government "are more effectually secured and promoted by schools of learning, charitable relief and religious instruction, &c., than by prisons and poor-houses," &c.; yet avers that this proves nothing, except it be that there are degrees of depravity in mankind, and that different corrections must be applied. It concedes the whole doctrine, that prevention of evil is better than the cure. It was not alleged that prisons and poor-houses were unnecessary; but that if people were better educated, or relieved by charitable institutions, these objects wholly sustained by public taxation would be required to a diminished extent, and that thereby more taxation is saved than the exempt property would yield. If this be so, and no one who observes can doubt it, then why tax the objects that are doing most good to prevent pauperism and crime? It would be a bad calculation of economy to tax to the extent of a few mills a charity that by one dollar judiciously applied in aid and encouragement of private effort for an honest livelihood, would save ten dollars to the public in taxation, if the object in the despair of abandonment should be wholly thrown as a charge on the public. Yet such is the purpose of all charities privately administered. School learning, if accompanied

with proper moral and religious instruction, in like manner enables the object of it in a manifold degree to become helpful to himself and useful to the community, and becomes also in like degree avertive of crime. There can be no wisdom, therefore, in exacting the dollar from private charity to be used for cure, when it will take five or ten dollars to cure the evil the one would have prevented. I repeat, in this unavoidable admission the whole argument is yielded.

The Solicitor now says, "it is not asserted that the law prefers one religious establishment over another," yet he had quoted with emphasis and italicized as the clause relied upon in the Consitution, "and no preference shall ever be given, by law, to any religious establishments or modes of worship." But the point is now given up and I am content. The word "support" is the only other thus emphasized; and the re-printing the memorial, without an additional idea upon the point, does not meet the allegation that "the omission of the government to collect a tax from a Church is no compulsion to support that Church," neither will any sound lawyer deny it as a point of constitutional law. That one who does not worship at the Church might indirectly pay more tax than if the Church was taxed, might be admitted, but for the former conceded position that Churches, Schools, &c., were more effective for the ends of government than prisons and poor-houses, and consequently save more to taxation than the exempt taxation would come to. In this truthful view of the whole matter, the non-worshipper saves pecuniarily, and lives in a better and a happier community, and the government acts wisely towards him and to all others in the encouragement afforded by the exemption.

The answer is silent as to the controverted point that "where there is no taxation there should be no protection," and the inference is fair that it is given up. It is now also asked, with a feeling of injury at the intimation to the contrary, where is there one sentence that denies the position that the law of Pennsylvania always encouraged and protected "churches, houses of religious worship, schools, almshouses and burying grounds," &c. Yet in the same sentence it is insisted that they should be discouraged, and their usefulness curtailed by taxation. He adds "let them pay for their protection, and, if needs be, let the State appropriate annually to these Institutions it would foster, as it does in the case of the Institute for the Blind, Deaf and Dumb," &c. For whose benefit, then, but to pay a commission to the Tax Collector and County Treasurer, for collecting and paying over the taxes to be raised by the literary, charitable and religious institutions, to be re-paid to them after months of inconvenience and delay? By the operation the State Treasury would lose just six per cent. for commissions paid, besides the risk of loss by insolvency or fraud.

But how could the taxes be paid as to the larger share of these exempt valuations, which are wholly unproductive or nearly so? Take the meeting house and grave yard of Friends at Fourth and

Arch streets, yielding no rents or burial fees, and where not a half dozen interments take place in the year, the aggregate of the taxes $1.61 in the $100, on the valuation of $200,000 would be $3,220; and the burial ground at Schuylkill Seventh and Race at $1288 per annum; and so on the Episcopal burying ground at Fifth and Arch, the taxes would be $2,576, and at Fourth and Pine streets, $1529.50; yet these yielded last year, the former, $187, the latter, $201, for interments, while the public is interested in preserving these open spaces for the admission of fresh air. Other places for like objects would be burthened in the same proportion, with the like inability to pay. The consequence of an onerous taxation upon those grave yards would be that they would have to be sold for building lots, and the dead removed—"Benjamin Franklin and Deborah his wife," at Fifth and Arch streets, inclusive.

There has been no period in the history of Pennsylvania, as a Province or State, when places of worship and grave yards were taxed. By the act of 1724, the names of *Freemen*, &c., were to be certified, "with an account of what tracts and parcels of land and tenements *they respectively* hold in such township,"—and the improved lands of such persons only were to be taxed.—1 Dall. 212. No alteration took place in this respect in the statutes until the Act of 1799, which enumerated in detail the objects of taxation, and omitted churches, meeting houses, and grave yards. The Act of 1834 made substantially a similar enumeration of objects; and then the Act of 1838 expressly exempted places of worship, colleges, burial grounds, &c. I cannot, therefore, find any warrant for the assertion made by the County Solicitor, that "not until the Act of the Legislature of April 16, 1838, was there any law or custom granting this exemption." If this be literally true, it is because there never had been any law passed to tax them, and the law and the custom did, therefore, in fact exempt them. They never have been taxed since the province was settled by Wm. Penn, and the attempt is now first made by the Solicitor and Commissioners of the County of Philadelphia.

The exaggeration of the amount of the exempt property it is attempted to sustain by showing some under-valuations, and that generally churches are not valued at their cost. The cost is not the criterion of value fixed by the law, but the price at which "the same would sell for, if sold singly and separately at a *bona fide* sale, after full public notice," that is, at vendue for ready money. The thing is worth what it will bring, and that depends upon the competition; and from the limited uses to which a church can be applied, it is not probable that churches would sell for much more than the value of the ground. The First Presbyterian church may be valued low at $20,000, but the Central one, at Eighth and Cherry streets, at $50,000, is twice too high, and other church property is overcharged. The valuation of Friends' meeting-house, at Sixth and Noble, is, by the Assessors's return in the County Com-

missioners' office, $25,000, and not $2,500, as printed. Many other equally flagrant mistakes exist in the memorial, and several properties are returned that don't exist, or are not known to the religious denomination credited with them. The other items I have no particular knowledge of; but do know, as it is asserted "full well that the Assessors fix the value, and not the County Commissioners," and verily I believe that they are more competent to do so. I would respect, too, the returns under their oath by the Assessors, a little more than the random estimates made by the County Solicitor. But in truth these objects do not admit of any accurate rule of valuation, for they are not marketable articles, and have no price, and should not be subjected to the guess of Assessors liable to various religious preferences or prejudices. The average result is, however, high enough.

The writer of the answer seems to rejoice in the happy hit he has made in rescuing from oblivion part of a report made to the Woodlands Cemetery Company, and would have his readers infer that the opposing argument comes from an interested source, and is not, therefore, to be relied upon. To discriminating minds, capable of judging for themselves, it is to be supposed that an argument that is truthful and demonstrative would be equally cogent for conviction, whatever its source. But I wish no better instance than the Woodlands Cemetery to prove the unproductiveness of such an enterprise. The calculations made in 1843 were correct then and are equally so now, but require for their success what was then proposed, that congregations should come in by a united action and sell to their members at the rate proposed; and that shareholders should buy and co-operate in numbers to make a speedy realization of profits. Neither did so. The invitation was made in vain; and after lingering for so long a period that the cost is doubled by the loss of interest, the Cemetery is only now making a fair commencement. The owners took the price of the ground in shares nominally at $250, but no such price for them was ever established in the market. They have waited eleven years without one cent of dividend received, after having sacrificed one-tenth of their shares, and a considerable portion of ground sold, to make the enclosures and improvements; and have incurred a debt (but not a lien) of over four thousand dollars. Yet the Woodlands is not exempted from State taxation.

Whatever the expectation of profit that may have influenced the enterprise, it has not been realized by the projectors; yet it, with others, will be of unquestionable benefit to the community in regard to health and liability to future taxation. It is a characteristic of the American people to profit by the experience of Europe, and avoid the evils which have grown up there; and without legislative aid or public sacrifice, the process of changing the place of interment from the city to the country is steadily making progress. So rife, offensive, and dangerous to health, had city burials become in Europe,

that it has generally become a measure of governmental police to prevent it. In London the end has been attained after extensive investigation only during the past year, by an act of Parliament, and large pecuniary sacrifice. The sense of justice of that Legislature of absolute authority was not satisfied by a mere prohibition of the evil, but made large and enduring pecuniary satisfaction out of the public taxation, to those who would lose thereby their customary perquisites; while here our County Solicitor and Commissioners, ambitious to signalize themselves as legislators, would tax, and sell for taxes, the grave yards of the city, which are undergoing by force of opinion only, and without compensation, the sacrifice that it required in England an act of Parliament to effect.

The event is thus made a matter of public congratulation in the Westminster Review, of October, 1850, p. 72. "The *Metropolitan Interment Act* is the most creditable and novel advance of the year. On the continent, the separation of the dwellings of the living from those of the dead, had long formed a condition of sanitary police, but in England it had not been legislatively recognised as a part of municipal government. In consequence the attack on grave yards was a new and hardy adventure. Consecrated prejudices had to be combated, and many old associations and unworthy sympathies surmounted. But the press did its duty, and the evils of the existing mode of sepulture were exhibited in such just and revolting portraiture, that general acquiescence has been obtained, without any more serious resistance than the ephemeral tumult of the undertakers and their dependents. The price to be paid has been demurred to, many thinking that it would have been sufficient to commute the interests of present incumbents, without transmitting, in perpetuity, an impost on mortality for future generations; but the pecuniary part of the contract may undergo future amendment, and in the interim the country rejoices at the prospect of the example of London being followed by provincial towns, and the gloomy deleterious church-yards being replaced by suburban cemeteries, ornamental and salubrious."

The County Solicitor congratulates himself, in conclusion, "that a vast majority of the Christian community, the members of the legal profession, the judiciary of this county, and the press generally, agree either wholly or in *part* with the sentiments expressed in the memorial," and thinks he would have the approval of nine tenths of the community. I do not know how large a scope is given to the little word *part*, but allowing him all reasonable latitude of qualification thereby, I incline to think that there is the same propensity to over-estimation and inaccuracy in this as in other particulars. I have met but two persons besides the County Commissioners who agreed with him, and I am sure they did so only in *part*. I happen to have a letter from one gentleman, "of the judiciary of the county," than whose authority none can be higher, that I am sure does not concur in the views of the County Solicitor; and so far as he refers to the County Solicitor's statement of the construction of the acts of

1838 and 1839, I have to say that the County Solicitor is in error, for all properties not within Judge Sharswood's construction of those acts are owing to exemption by special acts which I have examined and have references to, and do not arise from the construction of the acts of '38 and '39. If other property be omitted the county officers do not conform to the law.

I have thus noticed every point that appears to me to have any legitimate bearing on the subject of discussion. I have done so now as before with a plain business purpose befitting the importance and seriousness of the subject, in a way that seemed to me truthful and most likely to produce conviction to impartial readers, but with what success it is not for me to say. I do not boast of a triumph over my adversary nor over them. I have written in the expectation that my readers would be gentlemen, and most of them Christians, and I hope in a manner not to offend their taste or sense of propriety. I have designedly omitted to defend personal insinuations or to make them, because I thought them not pertinent to the argument and that it was best not to follow a bad example. There are certain rules that persons claiming to be gentlemen commonly concur in the propriety of observing, and among them these—not to insinuate improper motives of action by others, or to let go the argument to make personal imputations. This betrays a conscious weakness in the argument.

But there was yet a higher obligation that should have restrained my adversary from such a course, from the high regard professed for the privilege of Christian worship. But in this it seemeth to me he "did protest too much." Generally good Christians have "little to speak of" as to their religion. I have made no professions; but "when reviled, I have reviled not again." I have not drawn upon my fancy for law or facts, and am not conscious of having attempted any witicism or conceit, drawn from memory or the *vaccine* records, much less upon subjects deemed sacred from jest and levity by all devout Christians, and by all others who would pay a proper respect to feelings and opinions entertained as matters of religious faith. There is, indeed, an extent of irreverent quotation and poetic flourishing, and useless citation of definitions of taxation, not drawn in question, and published at the public expense, that disposes one to think that it would become the County Officers better to practice more economy in the use of the taxes collected, rather than to seek tribute from the funds devoted to Learning, Charity and Religion.

ELI K. PRICE.

March 31, 1851.

My Dear Sir:

I suppose I am indebted to you for a copy of a small pamphlet entitled "Taxation of Learning, Charity and Religion." I sincerely thank you for it. It represents fully and entirely my views. Prior to 1838, if not the law, it had been the custom not to assess church property, but in that year, as I understood, the Commissioners of Philadelphia county directed the Assessors to assess and return it at its full value. I was a member of the Legislature of that year, and with a view to prevent all question upon the subject, introduced a bill which passed both Houses without amendment, and became an act on the 16th April, 1838. You will observe that it carefully confines the exemption of church property to "all churches, meeting houses, or other regular places of stated religious worship, *with the ground thereto annexed for the occupancy and better enjoyment of the same.*" The Legislature of 1839, of which I was not a member, passed a supplement, limiting the amount of land to be exempt to five acres. In a recent conversation with Mr. Tarr, he informed me that the construction placed upon these acts, was, that all church property, within the limit of five acres, was exempt, without reference to whether it was annexed to the church or not, or for what purpose it was used. Such was not the intention of the Legislature, nor do I think the acts can be made to bear that construction.

There is a single other topic to which I would draw your attention—the monstrous inequalities that can be pointed out in the estimates or assessments in Mr. Tarr's pamphlet. To refer to a single instance, standing in juxta position, at p. 29. The First Presbyterian Church, Washington Square, is put down at $20,000. It cost $80,000. The next item is the Seventh Presbyterian Church, Broad street—$20,000. It cost, ground and building, $40,000. At the same rate of valuation as the First Presbyterian Church, it should have been assessed at $10,000. I have no doubt you will be able to discover, upon inquiry, the same preposterous inequalities throughout. Indeed, it is incident to the very nature of the subject. Upon what principle is church property to be valued? How are you to settle the market price of a thing which is not in the market? Is the ground to be assessed at its present value for building lots? How unequally would this operate between the old churches, who have their property in Second, Third and Fourth streets, taken up a century ago, and the new churches, west of Broad street? For the purpose for which it is used, the same space is as valuable in one place as another. Indeed, it is a disadvantage to a church to find itself abandoned by dwellings and surrounded by stores and warehouses. Is the cost of the church edifice not to be added? Why not, if every thing is to be brought to the rigid rule of paying taxes in proportion to its value? Is an elegant and costly structure, like St. Mark's or St. James The Less to be exempt, when a Society of Friends, who take the same amount of money and invest it in an

open lot around their plain brick meeting house are to be made to pay? Are the costly monuments of a splendid cemetery to be thrown out, and no difference made between it and a plain Quaker burial ground without stone or tablet? In short, the difficulty seems to me to be an insuperable one, of adjusting the assessments of such property upon any principle of equal justice. It must be in a great measure entirely arbitrary. Would it not be likely in the practical administration of the law—subjecting such property to taxation, that sectarian feelings would operate unduly in the minds of those on whom is devolved the duty of fixing the valuation or assessment? Our contributions to literary, charitable and religious institutions are voluntary taxes for the benefit of the public, levied in the most unobjectionable manner—administered under our own eyes, in effect administered by ourselves, and are subject to no deductions for commissions and allowances. The proposed repeal seems to me for the benefit of tax collectors, but nobody else; and besides being objectionable on the score of sound economy as you have so clearly shown, is calculated to lead to moral and political consequences, the ultimate results of which it would be difficult to estimate- We have already had experience of some of the evils of religious feeling introduced into politics; but how much greater may it not be, when it comes to be a matter of consequence to our pockets whether the assessor of our ward or township is a Roman Catholic, Episcopalian, Presbyterian or Friend? I hope your pamphlet may have an extensive circulation, and accomplish the end for which it is meant and so well calculated.

Very truly, yours,

GEO. SHARSWOOD.

Philadelphia, March 17,1851.

ELI K. PRICE, Esq.

Since the foregoing was sent to the press, I have heard with sincere regret that my adversary has been stricken down by the hand of Providence. I am the more exceedingly thankful that in defending a good cause I have made no personal attack—inserted no envenomed sting. I pray God may restore him speedily to health.

E. K. PRICE.